



SHAPIRO
SHER
GUINOT &
SANDLER

Scott W. Foley
Direct Dial: 410.385.4234
swf@shapirasher.com

36 S. Charles Street
Suite 2000
Baltimore, Maryland
21201-3147
Telephone: 410.385.0202
Facsimile: 410.539.7611

November 11, 2011

VIA EMAIL AND UPS OVERNIGHT DELIVERY

Forrester Construction Company, Inc.
12231 Parklawn Drive
Rockville, Maryland 20852
Attention: John R. Forrester

Re: EEC/FCC JV Contract dated June 11, 2009 for Anacostia Senior High School Project

Dear Mr. Forrester:

Reference is made to that certain JV Contract (the "JV Contract"), dated June 11, 2009, by and between Forrester Construction Company, Inc. ("Forrester") and EEC of DC ("EEC") for the Anacostia Senior High School project (the "Project"). EEC has been sending correspondence and initiating meetings all year to resolve many outstanding issues on the Project. However, many issues still remain unresolved and several additional issues have arisen, which has resulted in the necessity for this letter. Below is a summary of some of the pertinent outstanding issues on the Project:

1. Payments.

The JV Contract was entered into between Forrester and EEC to create a joint venture entity, EEC of DC, Inc./Forrester Construction, Anacostia Senior High School Project Joint Venture (the "Joint Venture"). The Joint Venture and the District of Columbia Government, acting by and through its Office of Public Education Facilities Modernization ("OPEFM") entered into a Construction Management Agreement for Anacostia Senior High School dated as of January 4, 2010 (the "ASHS Primary Contract"). Although EEC is a joint venture partner under the JV Contract, Forrester and EEC entered into a Master Subcontract Agreement dated as of May 1, 2009, which was amended on August 12, 2010 (the "ASHS Subcontract Agreement"), whereby EEC was to perform certain construction work on the Project. During the term of the Project, Forrester (on behalf of the Joint Venture) has failed to timely pay EEC for its subcontract work under the ASHS Subcontract Agreement. Most months, EEC has to call, email, write letters, and virtually beg Forrester to make payments on behalf of the Joint Venture. Many times the payments are significantly less than the amounts EEC submitted to Forrester for reimbursement; however, in order to pay its employees and contractors and be able to continue its business operations, EEC has on occasion accepted the lesser payments under duress with a

full reservation of rights and based upon the understanding that it will be made whole. Another example of payment issues arose in July 2011. Forrester neglected to include EEC's portion of the July expenses in the invoice submitted to OPEFM because, according to Forrester, its project manager had some personality conflicts with EEC's project manager. After EEC brought this matter to Forrester's attention, Forrester admitted that it made a mistake but only paid EEC \$400,000 of the \$600,000 amount billed.

Most recently, the payment issues have escalated. Despite repeated demand, EEC has yet to receive its reimbursement for its portion of the August payment (i.e. approximately \$617,000) made by OPEFM to the Joint Venture (which was received by Forrester on October 18, 2011). Stephen Houff and Debbi Watt of Forrester have continually said that they will look into the issue and get back to EEC but have yet to do so.

EEC trusts that Forrester has not been purposely delaying payments to try to cause EEC, a small minority owned company and 51% CBE partner, to suffer cash flow issues. The Joint Venture (i.e. Forrester on behalf of the Joint Venture) appears to be in breach of, among other things, Section 4.3.9 of the ASHS Primary Contract. That section provides that within seven days of receiving any payment from OPEFM, the Joint Venture shall pay the subcontractor (i.e. EEC) for its proportionate share of the amount paid to OPEFM or notify OPEFM and EEC in writing of the Joint Venture's intention to withhold all or part of the payment. It is my understanding that OPEFM has not been notified in writing of the withholding of any payments. Moreover, EEC has never received a reasonable explanation as to the delay.

Interestingly, EEC is the 51% joint venture partner on the Joint Venture but Forrester is in control of all of the finances and books for the Joint Venture. Therefore, EEC has had no say in making any type of payments, including EEC itself. Since Forrester is only the 49% joint venture partner on the Joint Venture, Forrester is also in breach of various provisions of the JV Contract (some of which are addressed below).

2. Change Orders.

To date, EEC has submitted to the Joint Venture (i.e. Forrester) approximately 20 change orders on the ASHS Subcontract Agreement, most of which are still outstanding. While EEC has been diligently submitting them to the Joint Venture, Forrester apparently has been stalling on submitting them to OPEFM. As a result, Forrester is making it very difficult for EEC to continue working as EEC has expensed a lot of items for which it has yet to be reimbursed. I trust that such actions are not an effort to make it more difficult for EEC to run a viable business.

3. Profits.

EEC would like to clarify the sharing of the profits issue under the JV Contract. Pursuant to Section 4 of the JV Contract, EEC is entitled to receive from the Joint Venture 51% of the net operating profits after taxes, and Forrester is entitled to receive 49% of the net operating profits after taxes. Nevertheless, pursuant to a purported Action of Management Committee for Joint Venture dated August 5, 2010 (which was signed in on December 20, 2010), Forrester has attempted to alter the profits to be earned by each entity under the JV Contract. Andre Downey was told by Forrester that he had to sign such Action of Management Committee if EEC wanted to receive the payment due to it at that time, which was approximately \$500,000. As a result, Mr. Downey signed the Action of Management Committee under duress and with a full reservation of rights. However, it has come to my attention that this document was never approved by the District of Columbia Department of Small and Local Business Development, as required by the JV Contract. Moreover, it has also come to my attention that the DCMR regulations provide that any joint venture agreements shall contain a provision indicating that the CBE's interest in the joint venture shall not be reduced or diluted. In addition, Section 27-817.2(a)(3) of the Code of D.C. Municipal Regulations provides that a joint venture agreement must provide that more than 50% of the net operating profits after taxes earned by a joint venture be distributed to the local, small or disadvantaged business enterprise. Consequently, EEC's position is that the August 5, 2010 Action of Management Committee is not enforceable and does not amend the JV Contract. In addition, it would be void for violating various DC government regulations (as more specifically described above). As a result, EEC is still entitled to 51% of the profits of the Joint Venture.

4. Bonding Requirements.

Pursuant to Section 5 of the JV Contract, each of EEC and Forrester are supposed to provide certain bonding requirements on the Project. EEC attempted to procure a bond for the Project but was told by Forrester that it could not provide the bonding because EEC did not have a "treaty" with Forrester's bonding company. As it turns out, Forrester may have knowingly misled EEC as its bonding company has since indicated that a treaty is not applicable and that EEC could have procured a bond for its respective portion of the bond (i.e. \$1,000,000 worth of bond coverage) by establishing a "co-surety" relationship. I hope that Forrester did not purposely provided false information to EEC and mislead EEC so that Forrester could later assert that EEC was in breach of the JV Contract. It is apparent that EEC had every intention of complying with the bonding requirement until EEC was provided inaccurate information by Forrester or, worse yet, intentionally misled.

As a solution to this issue, Forrester suggested that EEC enter into another Subcontract Agreement with Forrester (on terms unfavorable to EEC) relating to the remaining work to be performed on the Project. EEC's bonding company would only provide a bond if there was a

separate agreement for the remaining work on the Project. EEC and Forrester have been negotiating such a Subcontract Agreement for months; however, the Subcontract Agreement has yet to be signed because of a few remaining issues. As a result, Forrester has told EEC that it will hold up any further payments (including the outstanding August payment) until that Subcontract Agreement is signed. Again, Forrester seems to be trying to take advantage of a small minority owned business and 51% CBE partner to obtain what it wants under this joint venture arrangement. I hope that this is not the case and that Forrester has acted in this fashion in past dealings with other similarly situated small business owners.

5. Books and Accounts.

Pursuant to Section 7 of the JV Contract, both Forrester and EEC are supposed to have access to all books and records of the Joint Venture. However, only Forrester has had access to the books and records. EEC has repeatedly requested monthly financial statements but has only been provided with quarterly financial statements. In addition, all such records are to be maintained in accordance with the terms of the JV Contract and state statute of limitations or state repose laws, whichever is longer. Therefore, I hereby remind you that the books and records concerning the Project are not to be compromised in any fashion until further notice.

Pursuant to Section 6(b) of the Contract and Section 27-817 of the Code of D.C. Municipal Regulations, a representative of both EEC and Forrester are required to withdraw funds from the Joint Venture bank account via dual signatures. As a result, EEC hereby again requests access to the Joint Venture's bank account as soon as possible. Mr. Downey signed a bank signature card at the start of the Project and was under the false pretense that the Joint Venture bank account was set up in accordance with the JV Contract. When Mr. Downey was alerted by SunTrust that he was not a proper signatory on the account, Mr. Downey contacted Mr. Wayne Cabot, who informed Mr. Downey that he could not be added to the account after the account had been established. Mr. Downey told Mr. Cabot that Mr. Downey also banked with SunTrust and that this information appeared to be incorrect. Aside from obtaining copies of monthly bank statements, EEC has yet to obtain any resolution on this issue.

6. Taxes.

Another unresolved issue concerns the payment of taxes by the Joint Venture. Section 4 of the JV Contract provides that "all liabilities and losses arising out of or in connection with the JV Contract including, without limitation, any taxes, penalties, and any and all costs which may be imposed or liability incurred as a result of activities relating to construction and performance of the obligations called for in the JV Contract, shall be expenses of the Joint Venture." The sentence that follows provides that "the intent of the foregoing is to assure that the net operating profits after taxes earned by the Joint Venture will be distributed in the following proportions: 51% to EEC, 49% to Forrester." Reading these two provisions together, it seems clear that any

taxes imposed at the Joint Venture level shall be paid by the Joint Venture (and not the partners individually). In furtherance of this premise, Section 12 refers to winding up of the Joint Venture and provides that expenses include any and all taxes and fees imposed on the Joint Venture. Again, this refers to taxes of the Joint Venture (as an entity) and not EEC and Forrester, individually.

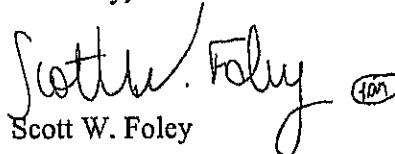
As a result, EEC hereby again requests that, to the extent of available cash, minimum distributions be made to each Joint Venture partner in accordance with each Joint Venture partner's percentage interest in an amount equal to profit times the maximum federal income tax rate on such distributions. Thereby, each Joint Venture Partner will be able to pay any income tax liabilities currently due and owing associated with the Joint Venture. Alternatively, EEC and Forrester can each submit an invoice to the Joint Venture so that the Joint Venture can pay for said expenses (similar to the accounting expenses paid to Forrester on the DOES Headquarters Project). To that end, kindly provide EEC with a copy of Forrester's tax liabilities for the Joint Venture so that EEC can confirm that each partner is consistently reporting their tax obligations to the Internal Revenue Service.

All of the aforementioned issues have been prolonged by the unresponsiveness or stonewalling of Forrester. It is essential at this point in the joint venture arrangement that they be resolved as soon as possible. Now that the Project is in the final stages, Forrester's actions appear to be more egregious. In addition, this Project (along with other Joint Venture Projects -- the DOES Headquarters Project and the Ward 1 Senior Wellness Center Project) total approximately \$120 million, which is not an insignificant amount.

EEC hereby demands immediate payment of its proportion of the August invoice submitted to OPEFM. If the Joint Venture does not immediately make such payment to EEC and rectify the outstanding issues, EEC is prepared to pursue its legal remedies.

This letter is not intended to be an election of remedies or an extension of time to cure. EEC reserves any and all rights.

Sincerely,



Scott W. Foley

cc: Office of Public Education Facilities Modernization, DC Government
Department of Small and Local Business Development, DC Government